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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

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OFFICE OF PETITIONS

In re Application of :
Saville, et al. : DECISION REFUSING STATUS
Application No. 10/797,020 : UNDER 37 CFR 1.47(a)
Filed: March 11, 2004 :
Atty. Dkt. No.: 95772-1440 :
For: ENHANCEMENT OF ENZYME :
ACTIVITY THROUGH PURIFICATION :
AND IMMOBILIZATION :

This decision is in response to the petition under 37 CFR 1.47(a), filed August 17, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed March 11, 2004 without an executed oath or declaration. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed June 1, 2004 requiring an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks requirements (1), and (2) set forth above.


As to item (1) set forth above. Petitioners have failed to establish that the non-signing inventor received the application papers (specification, including claims, drawings, and oath or declaration) and thereafter refused requests to execute the declaration. Petitioners allege that the non-signing inventor requested that a copy of the application papers be mailed to him for his review. The petition further indicates that, despite the inventor's request that the application papers be mailed to him, the inventor was required to appear before an Immodazyme employee to review and sign the application papers.

Petitioners are reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a complete copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor.

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.

Petitioners have failed to establish that an attempt was made to present to the non-signing paper a copy of the complete application papers (specification, including claims, drawings, and oath or declaration). Instead, petitioners have refused to mail a copy of the application papers to the inventor for his review and execution.

Any renewed petition should be accompanied by evidence to establish that the non-signing inventor was sent a complete copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the declaration. Petitioner may wish to provide the Office copies of letters sent to the inventors indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the non-signing inventor receives the application papers or refuses to accept the application papers, and requests to execute the oath or declaration are refused,


Alesia M. Brown
Petitions Attorney
Office of Petitions